THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.15927 of 2005

Dated: 04.12.2007

Between:

C.H.Shivaprasada Rao. .. Petitioner

And

The Government of Andhra Pradesh,
rep. by its Secretary, Education Department,
Hyderabad
and others. .. Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.15927 of 2005

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in not approving the absorption of the petitioner in the Aided Secondary Grade Post in B.S. Aided Primary School, Koppula, Ongole Mandal, Prakasam District as arbitrary and illegal, and consequently, direct the respondents to pay the salary to the petitioner in the Aided post from the date of his absorption i.e., 01.10.2004.

2. It appears, petitioner is a science graduate and has completed B.Ed. (Maths) and he was appointed as B.Ed. Asst. Maths in the year 1995 in B.V.R. Aided High School, Koppula. The competent authority approved the said appointment of the petitioner in an unaided vacancy in the year 1995 itself, and since then, he has been working to the utmost satisfaction of the respondents. In all, there are 15 Secondary Grade posts, approved by the competent authority, in the 3rd respondent's School, and out of those 15, 12 posts are admitted to grant-in-aid and three are unaided posts. In B.V.R. Aided High School, Koppula, there are total eight posts, out of which, five are admitted to grant-in-aid and three are unaided posts. According to the petitioner, he is the senior most School Assistant working in unaided post in B.V.R. Aided High School, Koppula, and therefore, he made a representation to the 3rd respondent on 29.09.2004 requesting to

consider his case for absorption into the Aided Secondary Grade Teacher post. Further, it is stated that one B.Hanumantha Rao, Secondary Grade Teacher, working in the 3rd respondent's School, on attaining the age of superannuation, had retired from service on 30.09.2004 and there are no unaided Secondary Grade Teachers working in the 3rd respondent's School, and therefore, the 3rd respondent has considered the case of the petitioner for absorption into the vacancy caused due to the retirement of Sri D.Hanumantha Rao and issued proceedings dated 01.10.2004 absorbing the petitioner as Secondary Grade Teacher, and the same was sent for approval to the District Educational Officer, Ongole, Prakasam District-2nd respondent, through the Mandal Education Officer, Ongole, vide his proceedings dated 06.10.2004. While so, it is the grievance of the petitioner that the 2nd respondent had rejected the proposal sent by the 3rd respondent on the ground that there was a ban imposed by the Government for filling up of Aided posts, vide Memo dated 20.10.2004.

3. A detailed counter affidavit has been filed by the 1st and 2nd respondents denying the allegations made by the petitioner and stating that since there is a ban imposed by the Government for filling up of aided posts vide memo dated 20.10.2004, the case of the petitioner was not considered.

4. The question that arises for consideration is whether the case of the petitioner for absorption into the Aided post, pursuant to the recommendations of the 3rd respondent and the Mandal Education Officer, can be rejected on the ground that there was a G.O. issued by the Government on 20.10.2004 imposing ban for filling up of aided

posts, which was issued subsequent to his appointment.

5. In this regard, the learned counsel for the petitioner relied upon the judgment rendered in W.P.No.12357 of 2005, dated 13.06.2005, wherein at paragraphs 3 and 4, it was held as under:

> "In the present case, admittedly, it is not in dispute that sanctions were granted prior to the said date of ban i.e., 20-10-2004 and in fact even the approved candidates' names were forwarded by the 4th respondent by his proceedings dated 08.09.2004 to the 3rd respondent and thereafter it is the third respondent, who failed to take any further action.
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> In the above circumstances, the respondents are directed to take appropriate decision with reference to the proceedings forwarded by the 4th respondent to the 3rd respondent by his proceedings dated 08.09.2004 and pass appropriate orders. It is also further made clear that if the third respondent is not competent to sanction the approval of the selected candidates, he can forward the said list with his recommendations with a request for the appropriate orders by the competent authority, and if such proceedings are forwarded by the third respondent, the other competent authority is directed to pass appropriate orders within a period of four weeks from the date of receipt of such communications. If the 3rd respondent is competent to approve the list, he has to pass such orders expeditiously, preferably, within a period of four weeks from the date of receipt of a copy of this order."

6. I am of the opinion that the issue that arises for consideration in this Writ Petition is squarely covered by the above judgment. Therefore, this writ petition is liable to be allowed declaring the action of the respondents in rejecting the case of the petitioner for approval of his absorption into the aided vacancy on the ground that there was ban as on the date of consideration of his case as arbitrary and illegal.

7. Accordingly, the writ petition is allowed and the 2nd respondent is directed to consider the proposal sent by the 3rd respondent-Management for absorbing the petitioner into the aided vacancy, without reference to the memo, dated 20.10.2004, issued by the Government imposing general ban on recruitment, and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order, and communicate the same to the petitioner. No costs.

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(C.V.RAMULU,J)

Dt.04.12.2007

v v